

From: Rick Garnett
Sent: Friday, March 17, 2017 9:34 AM
To: Tammi Davis; Melissa Wojnaroski ; Richard W. Garnett
Subject: IAC topic proposals

Dear Tammi and Melissa,

I'd like to propose 3 different possible topics. **First**, there's the one I proposed last year -- i.e., the issue of capital punishment in Indiana and, specifically, focus on the racial (and other) disparities involved, with an eye toward recommending abolition. Here's what I sent in last year:

This document provides helpful information, for those Committee members who are not already familiar with it, about capital punishment in Indiana: http://www.in.gov/ipdc/public/dp_links/indianadpfactsheet.pdf

Of particular interest to our Committee, I think, might be the following:

RACE AND THE DEATH PENALTY IN INDIANA

ρ A 2002 study conducted for Gov. O'Bannon found that offenders who kill White victims are more likely to be sentenced to death than offenders who kill non-White victims. The research team indicated that additional research and analyses would help determine whether race-neutral case factors are responsible for this apparent disparity, or whether similar defendants convicted of similar murders are in fact treated differently based upon the race of their victims. No further findings have been released.

ρ Of the 20 men executed in Indiana since the death penalty was re-enacted in 1977, only one was convicted and sentenced for killing a non-white victim.

ρ Death penalty proponents often suggest the reason that such a small percentage of death penalty cases involve African-American victims is that African-Americans make up a small percentage of the population. However, in 2007, researchers working as part of the ABA Indiana Death Penalty Assessment looked at all murders committed in Indiana from 1980 – 2000 and determined that the breakdown was nearly equal, with 53% of all murders involving white victims, and 47% involving minority victims. The breakdown was much less even with respect to murders from that same period which resulting in death sentences. White victims were involved in 84% of cases resulting in death sentences, with only 16% involving non-white victims. Indiana Homicides: 1980 - 2000

	White Victims	Non-White Victims
All Homicides	53%	47%
Homicides resulting in death sentences	84%	16%

ρ These same researchers identified race-neutral factors that affected the likelihood of a death sentence, so that they compared similar cases and were able to isolate the impact of race. They found that during this time in Indiana, the odds of a death sentence among homicides with a

similar level of aggravation were 16 times higher for cases where Whites were suspected of killing Whites than are the odds of a death sentence for cases in which Blacks are suspected of killing Blacks. They also found that the impact of race was lessened as more aggravating factors were present, and greater in cases that are less aggravated and present a closer case for prosecutors and jurors. The presence of White victims always places a thumb on the scale in favor of death, but that thumb has less impact when it is surrounded by weighty aggravating factors.

It strikes me that one of the things to be said in favor of this topic is that it is one that has the potential to have bipartisan and even nonpartisan appeal: Many "conservatives" are growing to question capital punishment -- especially in light of revelations about faulty procedures and excessive costs -- just as many "liberals" do. I would think that consensus on the Committee would be easier to achieve on this topic, or one like it, than on some others. (Some of us, for example, strongly support school vouchers while others are strong critics.) While the death penalty itself is, the Supreme Court has repeatedly affirmed, constitutionally permissible (when carefully regulated), the facts about racial disparities seem to me to bring this issue within our Committee's mandate.

Second, there's another issue that I *believe* was raised last year, and that was addressed in a report by the Michigan Advisory Committee, namely, civil asset forfeiture. Here is the Michigan report:

http://www.usccr.gov/pubs/Michigan%20Civil%20Forfeiture%20Report_2016.pdf

Finally, a new (for me, anyway) topic: Solitary Confinement in Indiana. There is increasing awareness of the challenges and problems involved with the use of solitary confinement, or administrative segregation. Pres. Obama focused on this issue with respect to juveniles (https://www.washingtonpost.com/politics/obama-bans-solitary-confinement-for-juveniles-in-federal-prisons/2016/01/25/056e14b2-c3a2-11e5-9693-933a4d31bcc8_story.html?utm_term=.932a668f728d) and there has been, in Indiana, litigation surrounding its use with persons with mental-health issues (<http://solitarywatch.com/2016/02/11/settlement-limits-solitary-confinement-for-people-with-mental-illness-in-indianas-prisons/>)

The issue is timely, as this federal court decision illustrates:

<http://solitarywatch.com/2017/03/10/federal-court-acknowledges-growing-legal-and-scientific-consensus-on-harms-caused-by-solitary-confinement/>

There is increasingly public interest in the topic as well, as the recent HBO documentary, "Solitary" (which is excellent), confirms:

<http://www.hbo.com/documentaries/solitary-inside-red-onion-state-prison>

For more on solitary confinement generally, this web site is a good resource:

<http://solitarywatch.com/2016/02/11/settlement-limits-solitary-confinement-for-people-with-mental-illness-in-indianas-prisons/>

I am attaching a short memo prepared by a student of mine on solitary confinement in Indiana.

My sense is that each of these topics **could** have bipartisan, cross-ideological appeal, which seems important.

Best,

RG

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Summary of Solitary Confinement Policies in Indiana

Under Indiana statute, prisoners may be “involuntarily segregated from the general population of a facility or program if the department first finds that segregation is necessary for the offender's own physical safety or the physical safety of others.”¹ The Indiana Department of Correction currently uses solitary confinement, or “restrictive housing status” as a policy for dealing with certain inmates in the corrections system. Inmates can be subjected to “restrictive housing status” if the prisoners poses a threat to the general prison population, a threat to the operation of correctional facilities, or the prisoner’s behavior is not at the acceptable level of the general prison population. The Indiana DOC lays out its procedures for administrative restrictive status housing in its own manual.²

Under the DOC’s policies, the head of each correctional facility can determine whether a restrictive housing unit is needed at that facility and can establish such a unit in accordance with DOC policies and procedures. The DOC also has “department-wide” restrictive housing, in which prisoners can be placed in the “Secure Housing Units” at designated facilities after review of the prisoner supports his or her placement. For such placement, the prisoners must meet the following criteria:

1. History of assaultive behavior;
2. Active member of a Security Threat Group who poses a threat to the safe and orderly operation of the facility;
3. A high escape risk;
4. The facility's need to contain, prevent, or end a disturbance or other threat to the orderly operation of the facility;
5. Pending an investigation, disciplinary hearing or criminal trial;
6. A documented history of behavior that causes staff to believe that the offender's continued presence in the offender general population would be detrimental to the security of the facility or the offender; or,
7. The offender is the subject of an on-going investigation and the restrictive status housing has been approved in accordance with the administrative procedures for Policy and Administrative Procedure 02-04-101, “The Disciplinary Code for Adult Offenders.”

Additionally, the prisoners “must have exhibited extraordinary security concerns, such as seriously injuring staff or offenders, participating in a hostage situation, identified security threat group leader, heavily involved in trafficking, or having a lengthy history of serious (Class A and/or B) conduct violations.” Also, before being placed into “department-wide” restrictive housing, prisoners must first receive a mental evaluation in order to determine them free of diagnosis from serious mental conditions.

¹ Indiana Code 11-10-1-7, [https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS11-10-1-7&originatingDoc=I7daadc7fd0cd11e490d4edf60ce7d742&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=\(sc.History*oc.Search\)#co_pp_8b3b0000958a4](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000009&cite=INS11-10-1-7&originatingDoc=I7daadc7fd0cd11e490d4edf60ce7d742&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.History*oc.Search)#co_pp_8b3b0000958a4)

² Indiana Department of Correction, “The Use and Operation of Adult Offender Administrative Restrictive Status Housing,” http://www.in.gov/idoc/files/02-01-111_AP_Administrative_Restrictive_Housing_7-1-2015.pdf.

The DOC's policies for the conditions restrictive housing include the following standards:

Prisoners will receive a minimum of one hour of physical recreation at least 5 days a week in an area outside their cells.

Prisoners will be allowed to shower at least three times a week.

It was a bit unclear what exact Indian DOC facilities used restrictive housing or how many prisoners are currently kept in restrictive housing. However, according to the DOC's website, Wabash Valley Correctional Facility has 72 single-cell units "devoted to administrative and short-term disciplinary confinement."³ Also, the policies and procedures in the DOC's manual refer to a secure housing unit at Wabash Valley Correctional and to department-wide restrictive housing available at Westville Correctional Facility.

³ "Wabash Valley Correctional Facility History," Indiana Department of Correction, <http://www.in.gov/idoc/3226.htm>.